



NATIONAL MEDIATION BOARD
WASHINGTON, DC 20572

(202) 692-5000

In the Matter of the
Application of the

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AIRLINE
DIVISION

alleging a representation dispute
pursuant to Section 2, Ninth, of
the Railway Labor Act, as
amended

involving employees of

FRONTIER AIRLINES, INC.

41 NMB No. 45

CASE NO. R-7406
(File No. CR-7012)

FINDINGS UPON
INVESTIGATION --
DISMISSAL

August 21, 2014

This determination addresses the applications filed pursuant to the Railway Labor Act (RLA)¹ by the International Brotherhood of Teamsters, Airline Division (IBT), involving the Mechanics and Related Employees craft or class at Frontier Airlines, Inc. (Frontier or Carrier). The first application was filed by the IBT, as the representative of the Mechanics and Related Employees craft or class at Frontier, pursuant to the order of the U.S. District Court for the Eastern District of Wisconsin in Case No. 10-C-0203. *Frontier Airlines, Inc.*, 28 NMB 527 (2001). The second application was filed by the IBT to accrete Maintenance Controllers, collectively Maintenance Control Supervisors (MCS) and Maintenance Control Managers on Duty (MOD), to the Mechanics and Related Employees craft or class at Frontier, and supported by a showing of interest. These applications were consolidated by the National Mediation Board (NMB or Board) in CR-7012.

¹ 45 U.S.C. § 151, *et seq.*

This application requires the Board to investigate whether Frontier is a separate system from the other carriers that comprised the Republic Airlines, et al./Frontier single system. See *Frontier Airlines, Inc.*, 41 NMB 31 (2014) (finding Frontier separate from Republic Airways Holdings (RAH) system for craft or class of Pilots); cf. *Republic Airlines et al./Frontier*, 38 NMB 138 (2011) (single system determination finding Frontier part of a single transportation system for the craft or class of Pilots, including Republic Airlines (RA), Shuttle America (Shuttle), and Chautauqua Airlines (Chautauqua) (collectively known as RAH)).

The current investigation establishes that Frontier is operating as a single transportation system for the craft or class of Mechanics and Related Employees and further, that the Maintenance Controllers are already covered by the IBT's certification. Therefore, the Board dismisses the case.

PROCEDURAL BACKGROUND

On July 30, 2001, IBT was certified as the representative of the Mechanics and Related Employees at Frontier. *Frontier Airlines, Inc.*, 28 NMB 527 (2001) (R-6823). On October 1, 2009, Frontier was acquired by RAH. On April 7, 2011, the IBT filed an application with the Board pursuant to the order of the U.S. District Court for the Eastern District of Wisconsin, initiating a representative dispute involving the Mechanics and Related Employees at Frontier. This application raised a single transportation system question and Cristina Bonaca was assigned as the Investigator.

While this application was pending, the IBT filed an application on August 12, 2013, seeking to accrete Maintenance Controllers to the Mechanics and Related Employees craft or class at Frontier. Frontier filed position statements on August 30, 2013 and September 30, 2013. IBT filed position statements on September 17, 2013 and November 18, 2013.

On December 3, 2013, RAH completed the sale of all of the outstanding shares of its wholly-owned subsidiary, Frontier Airlines Holdings, Inc. (which owns Frontier) to the Falcon Acquisition Group, Inc., an affiliate of Indigo Partners, LLC.

On April 3, 2014, the Board consolidated the two applications under NMB File No. CR-7012 and requested single system information about the Mechanics and Related Employees at Frontier and the Republic carriers. IBT, Frontier, and RAH filed their position statements on April 17, 2014.

ISSUES

Is Frontier operating as a separate transportation system for the craft or class of Mechanics and Related Employees? If so, are Maintenance Controllers appropriately part of the Mechanics and Related Employees craft or class?

CONTENTIONS

IBT

IBT states that following the sale of Frontier to Indigo Partners, LLC, Frontier moved its maintenance department, including mechanics and Maintenance Controllers, to Denver, Colorado where management of that department is now based. Frontier's Mechanics and Related Employees are on seniority lists that do not include any RAH employees, and these employees perform no work for the RAH carriers. Further, IBT states that labor relations and personnel functions are administered separately for the Frontier Mechanics and Related Employees.

The IBT contends that consistent with Board precedent, Frontier's Maintenance Controllers are properly part of the Mechanics and Related Employees craft or class. *See United Air Lines and Continental Airlines*, 40 NMB 205 (2013). Further, the Board has held that even where Maintenance Controllers had some additional authority beyond other mechanics, they still shared a sufficient community of interest to be in the Mechanics and Related Employees craft or class and not management officials. *See Southwest Airlines*, 38 NMB 87 (2011); *Hawaiian Airlines*, 29 NMB 308 (2002).

FRONTIER

Frontier contends that it constitutes a single transportation system for the craft or class of Mechanics and Related Employees. Frontier states that the operations of its Mechanics and Related Employees are completely separate from that of RAH and the remaining RAH carriers. RAH no longer holds an ownership interest in Frontier, and has no common ownership of, nor any common directors or managers with, any affiliate of Frontier, including Indigo Partners, LLC. Frontier's Board of Directors and management team, including those responsible for labor relations and personnel functions for the Mechanics and Related Employees craft or class at Frontier, are wholly separate from and do not overlap with that of RAH. Further, Frontier is held out to the public as a separate entity and is no longer included in RAH's consolidated reporting.

Frontier states that its employees who perform the functions of “Ground Service Equipment Mechanic” and “Aircraft Technician” are not on seniority lists with any RAH employees.

In regards to the IBT’s accretion application, Frontier contends that its Maintenance Controllers, both MCSs and MODs, are management officials ineligible for representation under the RLA. Frontier states that its Maintenance Controllers are management officials as they exercise a high degree of supervisory authority and independent judgment, and they receive managerial compensation and benefits.

RAH

RAH contends that following the sale of Frontier to Indigo Partners, LLC, and in accordance with the Board’s determination with respect to the Pilot craft or class, the Mechanics and Related Employees craft or class is not part of a single transportation system with the related employees at RAH. *See Frontier Airlines, Inc.*, 41 NMB 31 (2014). RAH states that following the December 2013 sale of Frontier, there is no longer any common-ownership or control between the Republic carriers and Frontier, and Frontier is held out to the public as a separate entity. RAH and Frontier each has its own separate website, corporate insignias, and financial reporting. No member of the Mechanics and Related Employees craft or class at Frontier performs any work for the RAH carriers.

FINDINGS OF LAW

Determination of the issues in this case is governed by the RLA, as amended, 45 U.S.C. §§ 151-188. Accordingly, the Board finds as follows:

I.

Chautauqua, Shuttle, RA, and Frontier are common carriers as defined in 45 U.S.C. § 181.

II.

IBT is a labor organization as provided by 45 U.S.C. § 152, Ninth.

III.

45 U.S.C. § 152, Fourth, gives employees subject to its provisions, “the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter.”

IV.

45 U.S.C. § 152, Ninth, provides that the Board has the duty to investigate representation disputes and to designate who may participate as eligible voters in the event an election is required.

STATEMENT OF FACTSCorporate Transactions and Management

On December 3, 2013, RAH completed the sale of all of the outstanding shares of its wholly-owned subsidiary, Frontier Airlines Holdings, Inc., to the Falcon Acquisition Group, Inc., an affiliate of Indigo Partners, LLC. On the same day of Frontier’s sale to Indigo Partners, LLC, David Siegel, President and CEO of Frontier, resigned from RAH’s Board of Directors. RAH no longer holds any ownership interest in Frontier, and has no common ownership of, nor any common directors or managers with, any affiliate of Frontier, including Indigo Partners, LLC.

Labor Relations/Personnel Functions

Frontier’s senior management team, including those responsible for personnel functions and labor relations for the Mechanics and Related Employees, is wholly separate from and does not overlap with that of RAH or the remaining RAH carriers. Frontier’s senior labor relations official is Director of Human Resources and Labor Relations Jacalyn Peters. Frontier maintains separate hiring, a separate employee handbook, and separate personnel policies.

Mechanics and Related Employees

The operations of Frontier with respect to the Mechanics and Related Employees are completely separate from that of RAH and the remaining RAH carriers. As of August 12, 2013, Frontier employed 11 Maintenance

Controllers (7 MCSs and 4 MODs).

The primary duty of Maintenance Controllers, MCSs and MODs, is to control Frontier's maintenance operation to ensure the operation is safe, legally-compliant, and reliable.

In support of its argument, Frontier provided job descriptions; a declaration from Steven Ray, Senior Manager, Maintenance for Frontier; a declaration from Thomas Castens, Director of Maintenance for Frontier; and some sections from Frontier's Maintenance Manual. In support of its argument, IBT provided two declarations from a Frontier MOD and another declaration from a Frontier MCS.

1. Maintenance Control Supervisors

MCS employees are the primary point of contact regarding out-of-service aircraft and the current mechanical status of all aircraft in Frontier's fleet. MCS employees report to the Senior Manager of the Maintenance Control Center (MCC), Robert Hoover. According to Frontier, the MCS employees are the persons "directly in charge" and responsible for the work of the maintenance shop as required by Federal Aviation Authority (FAA) regulations. MCS employees send all work cards and instructions to the vendor, review those materials with the vendor's mechanics, and ultimately sign off on the work performed. Other duties of the MCS employees include providing technical guidance to Frontier's maintenance personnel regarding technical, operational, and procedural matters; authorizing Minimum Equipment List (MEL) and Configuration Deviation List (CDL) deferrals; authorizing removal of aircraft if maintenance service was not performed satisfactorily; and supervising mechanics on field trips, including mechanical work and travel logistics. MCS employees are salaried employees and they receive the same compensation and benefits as management officials at Frontier.

Frontier provided a job description for the MCS position which provides the following:

Position Summary: Manages and controls maintenance operations on a shift basis in order to provide safe, compliant and reliable operations. Is the primary point of contact regarding aircraft out of service and the current mechanical status of all aircraft in the Frontier fleet.

Essential Functions:

- Directly in charge of all maintenance activities performed by contract maintenance personnel to ensure strict compliance with Frontier's General Maintenance Manual policies and procedures.
- Provides technical guidance to maintenance personnel and is available for consulting and decisions on technical, operational and procedural matters.
- Has the authority to remove an aircraft from service if maintenance work is not satisfactorily completed.
- ...
- Authorizes the use of maintenance vendors for emergency maintenance and ferry flight inspections in non-maintenance stations.
- Authorizes MEL/CDL deferrals in accordance with the procedures outlined in Frontier's General Manual.
- Develops work scopes for MEL/CDL deferrals recommending necessary troubleshooting steps and requisitioning required materials.
- ...
- Coordinates aircraft out of service events with Maintenance, Material Services, Technical Support and Engineers to reduce schedule impact and downtime.
- ...
- Generates reports on delays, cancellations, out-of-service and other performance data for management information.
- ...
- Provides sufficient turnover to incoming personnel so they are familiar with all work in progress and all items requiring follow up.

Other Functions:

- Maintains a shift log including documentation of aircraft worked on during shift.
- Reviews prior shift logs and is familiar with previous shift activity.
- Other duties that may be assigned by the M.O.D. or Senior Managers of the Department.
- Reports to: Senior Manager MCC/ Maintenance Planning, Technical Services.

If management or supervisory position, which positions report directly to this one?

- Manage the operation on a shift basis including personnel from other departments. Supervise the Line and Heavy Maintenance Mechanics in the performance of their duties including FAR regulated activities.

Qualifications:

- Knowledge of airline maintenance practices, federal aviation regulations, and Frontier’s General Maintenance Manual policies and procedures.
- Airframe and Powerplant License is required.
- ...
- Previous experience as a maintenance supervisor preferred.
- ...

Knowledge, Skills & Abilities:

- Excellent Airbus systems knowledge and troubleshooting skills.
- Must have excellent written and oral communication skills, and be able to interface effectively with Engineering, Maintenance, Purchasing, Flight Operations Management, Flight crews, and Dispatchers effectively.
- ...

2. Maintenance Control Managers on Duty

MODs are a promotional position from the MCS position and also report to the Senior Manager of the MCC, Robert Hoover. MCSs receive delegated assignments from the MODs. MODs delegate maintenance tasks to mechanics or vendors who are assigned to work on a specific aircraft, and are responsible for the ultimate completion of work assignments and returning aircraft to service. MODs are the primary contact with management regarding the status of all Frontier aircraft, and for ensuring compliance with all maintenance control policies and procedures. MODs have the authority to ground an aircraft, “rob” components from an aircraft, and approve deferrals for top priority deferral items. MOD employees are salaried employees and they receive the same compensation and benefits as management officials at Frontier.

Section 10.13 of Frontier’s Maintenance Manual provides that: “Discretion to extend working hours beyond 16 hours will reside solely with the

supervisor or manager on duty (MOD) or MCC, as appropriate, with employee concurrence.”

Frontier also provided a job description for the MOD position which provided the following:

Brief Description: Provides communication and coordination with Flight Dispatch, Station Operations, Line and Heavy Maintenance, Inspection, Engineering, and Purchasing to ensure continuing safe aircraft for scheduled service.

Responsibility:

- Provide single-source management contact and authority for current mechanical status and maintenance of all aircraft systemwide on their shift, including authority to stop or ground aircraft if work is not completed satisfactorily.
- Hold overall daily responsibility for work assignments, personnel administration, and manpower planning in the Maintenance Control Center.
- Conduct daily conference call with Material Control, Technical Planning, and Line Maintenance stations for the coming Remain Overnight (RON) maintenance activities....
- Effectively manage all operational emergencies related to aircraft and aircraft recovery.
- Supervise and coordinate all unscheduled maintenance functions....
- Provide a continuous briefing of daily fleet-wide mechanical status to senior management members.
- ...
- In departments without Supervisors, ensure that personnel within the department including themselves have current training and qualifications to perform assigned tasks.
- Assumes senior level authority when making system operation decisions.

Qualifications:

- FAA-certified mechanic with Airframe and Powerplant ratings.
- Five years of heavy and/or line maintenance experience.
- Three years of supervisory experience in a maintenance operations environment.
- Preferred – College degree.

- ...
- Must have the ability to plan, organize, and administer workloads to subordinates.
- ...

Marketing and Operations

Frontier has a separate operational structure, independent flight operations, and maintains a separate FAA operating certificate from the other RAH carriers.

Frontier is now held out to the public as a separate entity and is no longer included in RAH's consolidated reporting. In addition, Frontier's website, <http://www.flyfrontier.com/who-we-are/company-info/fact-sheet>, provides that their headquarters is in Denver, Colorado. In describing Frontier, the website provides the following:

Currently in its 20th year of operations, Frontier employs more than 3,900 aviation professionals and operates more than 350 daily flights. Its primary hub is at the Denver International Airport. Frontier offers service to more than 75 destinations in the United States, Costa Rica, the Dominican Republic, Jamaica, and Mexico.

In contrast, RAH's website, http://rjet.com/Who_We_Are/Airlines.aspx, states:

Republic Airways Holdings, based in Indianapolis, Indiana, is an airline holding company that owns Chautauqua Airlines, Republic Airlines and Shuttle America.

Equipment

Frontier's fleet is painted with the Frontier livery.

Insignia and Logos

Frontier retained its corporate insignia and logos post-merger with RAH.

DISCUSSION

I.

The Board's Authority

45 U.S.C. § 152, Ninth, authorizes the Board to investigate disputes arising among a carrier's employees over representation and to certify the duly authorized representative of such employees. The Board has exclusive jurisdiction over representation questions under the RLA. *General Comm. of Adjustment v. M.K.T. R.R. Co.*, 320 U.S. 323 (1943); *Switchmen's Union of N. Am. v. Nat'l Mediation Bd.*, 320 U.S. 297 (1943). In *Air Line Pilots Ass'n, Int'l v. Texas Int'l Airlines, Inc.*, 656 F.2d 16, 22 (2d Cir. 1981), the court stated, "[t]he NMB is empowered to . . . decide representation disputes arising out of corporate restructurings."

II.

Single Transportation System

The Board's Representation Manual (Manual) Section 19.4 provides that: "Any organization or individual may file an application, supported by evidence of representation or a showing of interest . . . seeking a NMB determination that a single transportation system exists." Manual Section 19.501 provides the factors for making a determination whether a single system of transportation exists.

In *Trans World Airlines/Ozark Airlines*, the Board cited the following indicia of a single transportation system:

[W]hether a combined schedule is published; how the carrier advertises its services; whether reservation systems are combined; whether tickets are issued on one carrier's stock; if signs, logos and other publicly visible indicia have been changed to indicate only one carrier's existence; whether personnel with public contact were held out as employees of one carrier; and whether the process of repainting planes and other equipment, to eliminate indications of separate existence, has been progressed.

Other factors investigated by the Board seek to determine if the carriers have combined their operations from a managerial and labor relations perspective. Here the Board investigates whether labor relations and personnel functions are handled by one carrier; whether there are a common management, common corporate officers and interlocking Boards of Directors; whether there is a combined workforce; and whether separate identities are maintained for corporate and other purposes.

14 NMB 218, 236 (1987).

In this case, because of its findings with respect to the Pilot craft or class at the RAH system, the Board must look to see what is the appropriate transportation system for the Mechanics and Related Employees at Frontier. See *Frontier Airlines, Inc.*, 41 NMB 31 (2014) (Board found Frontier to be a separate transportation system from the RAH carriers for the craft or class of Pilots, in large part due to its sale from RAH to Indigo Partners, LLC); cf. *Republic Airlines, et al./Frontier*, 38 NMB 138 (2011) (Board found Frontier part of the RAH single transportation for the craft or class of Pilots).

Frontier is now owned by Indigo Partners, LLC and does not share Boards of Directors or other senior managers with RAH. Frontier controls all aspects of its operations, holding its own FAA operating certificate, flying its aircraft under the Frontier livery and code, with Mechanics and Related Employees reporting to Frontier management. Frontier additionally controls all aspects of its labor relations and all personnel policies. Frontier is also held out to the public as separate from the RAH carriers, both on its website and in financial reporting. Finally, the Mechanics and Related Employees at Frontier are on separate seniority lists from the Mechanics and Related Employees at the RAH carriers. As such, there are no indicia of a combined Republic Airlines, et al./Frontier single transportation system for the craft or class of Mechanics and Related Employees. See *Northwest Airlines, Inc./Delta Air Lines, Inc.*, 37 NMB 88 (2009) (Board finds a single transportation system only when there is substantial integration of operations, financial control, and labor and personnel functions.); See also *Precision Valley Aviation, Inc., d/b/a Precision Airlines and Valley Flying Serv., Inc., d/b/a Northeast Express Reg'l Airlines*, 20 NMB 619 (1993) (a substantial degree of overlapping ownership, senior management, and Boards of Directors is critical to finding a single transportation system).

Based upon the application of the principles cited above to the facts established by the investigation, the Board finds that Frontier is operating as a single transportation system for the craft or class of Mechanics and Related Employees.

III.

Maintenance Controllers

A. Status as Management Officials

IBT seeks to accrete the Maintenance Controllers into the Mechanics and Related Employees craft or class. The Carrier asserts that these individuals are management officials, and, therefore, not part of the craft or class.

The Board's Representation Manual (Manual) addresses management officials. Manual Section 9.211 states:

Management officials are ineligible to vote. Management officials include individuals with:

- (1) the authority to dismiss and/or discipline employees or to effectively recommend the same;
- (2) the authority to supervise;
- (3) the ability to authorize and grant overtime;
- (4) the authority to transfer and/or establish assignments;
- (5) the authority to create carrier policy; and,
- (6) the authority to commit carrier funds.

The Investigator also considers:

- (1) whether the authority exercised is circumscribed by operating and policy manuals;
- (2) the placement of the individual in the organizational

hierarchy of the carrier; and,

(3) any other relevant factors regarding the individual's duties and responsibilities.

When evaluating managerial authority, the Board evaluates the above factors cumulatively. See *USAir*, 24 NMB 38, 40 (1996) citing *Pan American World Airways*, 5 NMB 112, 115 (1973). "In many cases, the Board finds that while there are certain factors indicating some level of authority, when all factors are viewed cumulatively the individuals at issue generally are first-line supervisors, not management officials." *USAir, above*, at 41.

Frontier argues that the Maintenance Controllers are management officials because they are highly placed within Frontier's corporate hierarchy, reporting directly to Frontier's Director of Maintenance, Tom Castens; they exercise supervisory authority and independent judgment; they have the authority to effectively recommend corrective action and hiring decisions, including selection of vendors; they propose and draft carrier policy; they effectively commit carrier funds; and they receive managerial salaries and benefits. MODs, in particular, are required to have three years of supervisory experience and the job description provides they "assume[] senior level authority when making system operation decisions."

The Carrier argues that its Maintenance Controllers exercise significant supervisory authority and independent judgment by having overall daily responsibility for the completion of maintenance work assignments, aircraft return to service, and field trips with minimal immediate supervision or guidance. Further, Maintenance Controllers may take on some of the duties of the MCC Senior Manager when he is absent. In addition, Maintenance Controllers have authority to approve deferral for top priority deferral items, effectively recommend corrective action and hiring decisions when they report problems with a mechanic or vendor's performance, and assist with fact-gathering in the investigation of internal incidents. According to Frontier, Maintenance Controllers have authority in the selection, assignment, and replacement of Frontier's vendors, and play a role in carrier policy when they propose and draft changes to policy manuals as part of Frontier's manual revision process. Finally, Maintenance Controllers have some authority, often with prior authorization required, to spend carrier funds for emergencies such as field trips or hotel costs. MODs have the authority to extend a mechanic or vendor's working hours beyond 16 hours when the MCC is unavailable.

IBT responds that neither MODs nor MCSs are management officials under the RLA. IBT states that Frontier's Maintenance Controllers provide support, control, coordination, and direction on the maintenance of Frontier's fleet and generally perform the same duties as other Maintenance Controller groups found by the Board to be part of the Mechanics and Related Employees craft or class. IBT states that MODs perform essentially the same duties as MCSs, except that MODs additionally create and review a shift turnover, review delays and update the Morning Report form, and act as team leader on the desk for questions and answers. IBT contends that the authority of Maintenance Controllers is highly circumscribed by operating and policy manuals.

IBT contends that Maintenance Controllers have *de minimis* authority to commit Carrier funds. IBT's declarant stated that for most purchases, MODs must go to the Senior Manager of Maintenance Control for use of his credit card and to authorize the purchase. The declarant stated that the only instance where pre-approval is not required is to secure a rental car or hotel room, and only then if crew scheduling and corporate travel were unable to arrange it. According to the IBT's declarant, if Maintenance Controllers need a part for an aircraft, they submit an order request to a buyer who orders the part. "Maintenance Controllers are not consulted on prices nor have any input into whether a part purchase is approved or disapproved." IBT states that if a Maintenance Controller needs to charter a flight to get parts or equipment to a repair location, they must get approval from the Senior Manager of Maintenance, Control and Technical Services or the Director of Maintenance. *See United Airlines and Continental Airlines*, 40 NMB 205, 213-14 (2013) (Board found Maintenance Controllers, who were authorized to direct the purchase of parts without additional approval and to engage charters for up to \$250,000 in conjunction with a senior manager, to have limited and routine authority to commit funds that did not amount to management authority).

IBT disputes Frontier's contention that Maintenance Controllers have authority in the selection, assignment, and replacement of Frontier's vendors. Rather, IBT argues that the decision as to what vendors are used, who will perform the work, and how they perform the work is all dictated by Frontier's FAA-approved policy manuals. The IBT's declarant states that Maintenance Controllers "do not and could not report problems with Mechanics' or vendors' actual performance because they do not observe or inspect" any of the work they perform. Rather, the Maintenance Controllers "may report a problem with paperwork filled out ... if the paperwork indicates proper procedures were not followed or if the paperwork is simply filled out wrong." IBT contends that in reporting such problems to management, Maintenance Controllers make no

recommendations with respect to investigation or discipline.

Regarding the role of Maintenance Controllers on field trips, IBT states that they simply provide technical guidance and consultation to mechanics assigned on field trips, and pass travel information to other departments for arrangements to be made. IBT's declarants stated that they were not aware that Maintenance Controllers had the authority to impose discipline on field trips, and Frontier did not provide any evidence of actual cases where discipline was in fact administered.

In *NetJets Services, Inc.*, the Board considered the evidence cumulatively and found Maintenance Controllers to be part of the Mechanics and Related Employees craft or class and not management officials. 39 NMB 299 (2012). The *NetJets* Maintenance Controllers directed maintenance and repair work, and could order parts and engage vendors, but were found not to be management officials as they could not create carrier policy or discipline employees. *Id.* at 311; *see also United Parcel Serv. Co.*, 27 NMB 3 (1999) (Maintenance Controllers who were responsible for monitoring aircraft maintenance and providing technical assistance, and who were salaried, and did not share benefits, training, or uniforms with the mechanics, were found to be properly in the Mechanics and Related Employees craft or class.).

In *Southwest Airlines*, the Board found that Southwest Airlines' Maintenance Controllers who had some authority to commit carrier funds, who were paid a salary comparable with management officials, and had the authority to remove mechanics from performing work and recommending discipline, were not management officials. 38 NMB 87 (2011); *see also United Air Lines and Cont'l Airlines*, 40 NMB 205 (2013) (Board found that Maintenance Controllers were not management officials even though they had some level of authority at the carrier).

The evidence submitted in this matter does not establish that the Maintenance Controllers, MODs or MCSs, are management officials. While Maintenance Controllers do direct the work of mechanics and vendors and order necessary parts for aircraft, their authority is circumscribed by policy manuals and Frontier's internal procedures. While MODs can override the decision of a Senior Manager of Line Maintenance regarding the airworthiness of an aircraft, they may do so only in the event that the MCC Senior Manager is absent. The fact that Maintenance Controllers can select vendors from an approved list of Frontier vendors does not amount to the authority to establish assignments. Further, the ability to propose and draft changes to policy manuals, as part of Frontier's manual revision process, does not establish that

the Maintenance Controllers have the authority to create carrier policy.

Maintenance Controllers also direct the maintenance activities of mechanics and vendors on field trips, but the evidence does not support that the Maintenance Controllers have the authority to discipline the employees on the field trips or use significant company funds without prior approval from Frontier management. *Cf. United Airlines, Inc.*, 30 NMB 9, 12 (2002) (Board determined Lead Engineers were management officials where they had “substantial authority to commit funds” and “cost centers with annual budgets ranging from \$457,000 to over \$2,000,000.”).

Although Maintenance Controller’s may assist in the investigation of internal incidents, report problems with a mechanic or vendor’s performance, or be consulted regarding promotion to an MOD, these duties are not equivalent to having the authority to dismiss, discipline, or recommend employees. *See Southwest Airlines*, 38 NMB 87, 99-100 (2011) (Maintenance Controllers who had the authority to remove mechanics from aircraft and recommend discipline demonstrated only a level of authority of first line supervisors, not management officials). In addition, no specific evidence of the authority to dismiss or discipline was provided. *See Allegheny Airlines*, 26 NMB 487 (1999) (Board found that insufficient evidence was provided to establish the authority to recommend discharge or discipline).

While Frontier’s Maintenance Controllers do receive a salary and managerial benefits, rather than hourly wages and overtime, and do have some supervisory authority with respect to mechanics and vendors, these factors are insufficient for an employee to be rendered a management official under the RLA. The Board finds that the Carrier did not provide evidence of the necessary level of authority to establish that Maintenance Controllers are management officials.

B. Work-Related Community of Interest

In determining the appropriate craft or class on a particular carrier, the Board examines a number of factors including functional integration, work classifications, terms and conditions of employment, and work-related community of interest. *United Parcel Serv.*, 33 NMB 307 (2006); *AirTran Airways, Inc.*, 31 NMB 45 (2003); *United Parcel Serv. Co.*, 30 NMB 84 (2002); *Frontier Airlines, Inc.*, 29 NMB 28 (2001). The factor of work-related community of interest is particularly important. *US Airways, Inc.*, 31 NMB 324, 334 (2004). To evaluate this factor, the Board examines the actual duties and responsibilities of the employees, the environment in which the employees

work, and the interaction among the employees involved. *American Airlines, Inc.*, 10 NMB 26, 39 (1982). The purpose of the community of interest test is to ensure that a particular grouping of employees “possess a sufficiently distinct community of interest and commonality of functional characteristics to ensure a mutuality of interest in the objective of collective bargaining.” *Continental Airlines, Inc. /Continental Express, Inc.*, 27 NMB 99, 109 (1999). The Board makes craft or class determinations on a case by case basis, relying upon NMB policy and precedent. *US Airways, Inc.*, 28 NMB 104 (2000); *US Air*, 15 NMB 369 (1988).

The Board has examined the scope of the craft or class of Mechanics and Related Employees in numerous decisions. *AirTran Airways, above*; *United Parcel Serv. Co., above*; *US Airways, Inc., above*; *United Parcel Serv. Co.*, 27 NMB 3 (1999). “The related employees . . . while of different skill levels from the mechanics, nonetheless are closely related to them in that they are engaged in a common function – the maintenance function . . .” *Eastern Air Lines, Inc.*, 4 NMB 54, 63 (1965). This “functional” connection between mechanic classifications and those employees who perform related maintenance operation has historically formed the basis for their identity as a single craft or class. *Id.*; see also *Federal Express Corp.*, 20 NMB 360 (1993).

It is equally well-settled that the Board includes employees other than mechanics in the Mechanics and Related Employees craft or class. The Board’s inclusion of “related” employees is based on the regular direct contact with the mechanics and a strong tie to the maintenance function. There are a significant number of Board decisions finding Maintenance Controllers properly part of the Mechanics and Related Employees craft or class. *NetJets Services*, 39 NMB 299 (2012) (Maintenance Controllers part of the Mechanics and Related Employees craft or class); *Southwest Airlines*, 38 NMB 87 (2011) (Maintenance Technicians and Maintenance Controllers part of the Mechanics and Related Employees craft or class); *Air Tran Airways, Inc.*, 31 NMB 45 (2003) (Maintenance Planners part of the Mechanics and Related Employees craft or class); *Hawaiian Airlines*, 29 NMB 308 (2002) (Maintenance Controllers/Coordinators found part of Mechanics and Related Employees craft or class). Frontier’s Maintenance Controllers have the same basic qualifications and duties as the Maintenance Controllers in the Board’s prior decisions where they were found to be properly part of the Mechanics and Related Employees craft or class.

Based upon the evidence presented, Frontier’s Maintenance Controllers perform maintenance-related work and are in regular direct contact with Frontier’s mechanics. Accordingly, the Board finds that these positions share a

work-related community of interest with the Mechanics and Related Employees craft or class.

IV.

Accretion

The Board's broad discretion to determine the manner in which it conducts investigations in representation disputes was upheld conclusively in *Brotherhood of Ry. & S.S. Clerks v. Ass'n for the Benefit of Non-Contract Employees*, 380 U.S. 650 (1965). The Court held that in determining the choice of employee representative, the RLA "leaves the details to the broad discretion of the Board with only the caveat that it 'insure' freedom from carrier interference." *Id.* at 668-69.

In *Ross Aviation, Inc.*, 22 NMB 89 (1994), the Board dismissed the Organization's application stating that an election was unnecessary because the employees at issue were already covered by Board certification. Since then, the Board has consistently followed this policy when it finds that particular job functions are traditionally performed by members of a certified craft or class. *Southwest Airlines*, 39 NMB 246 (2011); *Southwest Airlines*, 38 NMB 87 (2011); *United Air Lines, Inc.*, 32 NMB 75 (2004); *AirTran Airways, Inc.*, 31 NMB 45 (2003); *Frontier Airlines, Inc.*, 29 NMB 28 (2001).

The Board bases its accretion determinations upon work-related community of interest. However, the Board requires all applications in representation matters to be supported by an adequate showing of interest. In this case, the requisite 50 percent showing of interest was provided with the IBT's application and therefore, accretion is appropriate.

CONCLUSION

The Board finds that Frontier is operating as a single transportation system for the craft or class of Mechanics and Related Employees. Further, the Board finds that Frontier's Maintenance Controllers are covered by the IBT's certification in NMB Case No. R-6823. As there is no basis for further investigation, NMB File No. CR-7012 is converted to NMB Case No. R-7406 and dismissed.

By direction of the NATIONAL MEDIATION BOARD.



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Member Geale, concurring.

I agree with my colleagues in the decision generally but write separately to express concerns over the NMB's process for adding employees to a craft or class, i.e., accretion. As a result of regulatory changes to our election requirements in 2010² and statutory changes to our showing of interest requirements by legislation in 2012,³ I believe it would be a prudent time generally to reconsider the Board's accretion policy. Furthermore, the specific history for this craft at this carrier demonstrates some of the potential problems with our accretion policy and why we might want to consider changes.

I otherwise agree that Frontier is a separate single transportation system from Republic Airways Holdings, and I also agree that that the positions at issue in this case appear to share a community of interest with the Mechanics and Related Employees craft or class.

² Representation Election Procedure, 75 Fed. Reg. 26,062 (May 11, 2010).

³ FAA Modernization and Reform Act of 2012, Pub. L. No. 112-95 §126 Stat. 11, 147 (2012).

As a preliminary matter, it does seem a bit odd that these 11 employees/positions would now be added to a craft or class that they have been outside for at least 10 and possibly 13 years. The Board's discretion in its representation function, however, is not trumped by prior practice or party conduct even over a 10 or 13 year period. *See, e.g., Northwest Airlines, Inc.*, 27 NMB 307 (2000) (*quoting US Airways, Inc.*, 27 NMB 138 (1999)). While the long period where these positions were outside the craft or class at least supports the Carrier's contention that they might be management officials, our longstanding precedent as ably summarized in the decision above has held these types of positions are generally part of the Mechanics and Related Employees craft or class absent substantial distinguishing characteristics, including enhanced authority and discretion, that did not appear to be demonstrated here. Indeed, working conditions change over time such that there may have been an insufficient community of interest with the rest of the craft or class previously or a lack of support in being represented so the passage of time while certainly a factor here does not alter the conclusion that these positions appear appropriate to accrete into the craft or class.

General Concerns with Accretion Policy

A fundamental statutory duty⁴ of the NMB is to safeguard the freedom of association rights of working Americans in our covered industries. We uphold this duty generally by providing a secret ballot election for all eligible employees in the craft or class to choose to certify or not to certify an exclusive representative.

A separate and important policy goal of the agency is preventing fragmented crafts or classes across our industries to ensure the functionality and efficiency of our national transportation systems and maintain constructive and efficient labor-management relations. *See, e.g., American Airlines, Inc.*, 21 NMB 60 (1993); *Eastern Air Lines, Inc.*, 12 NMB 29 (1984); *Galveston Wharves*, 4 NMB 200 (1962). In order to avoid such fragmentation of a craft or class, the addition or "accretion" of employees with a community of interest into such an existing craft or class has generally been the policy at the NMB. It is not the concept of accretion but rather the current NMB process for accretion where I have concerns.

Before 1994, where a group of employees was seeking to be added into a craft or class existing when the certification covering the larger group was issued, the Board required an election to determine whether the previously

⁴ See 45 U.S.C. §152, Fourth and Ninth.

omitted group should be added.⁵ In 1994, the Board changed its longstanding policy and accreted a group of Aircraft Inspectors into a Mechanics and Related Employees craft or class without an election, citing concerns that: “an election among Aircraft Inspectors would permit only a fraction of the craft or class to vote. Conducting an election among only a small portion of the craft or class is tantamount to allowing fragmentation of the craft or class.” *Ross Aviation, Inc.*, 22 NMB 89, 93-94 (1994). The new policy required an “adequate” showing of interest and a finding of sufficient community of interest only for the accretion. *Id.*

I believe that *Ross* should be reconsidered, and I am not the first Board Member to raise concerns about the policy generally or its application to this craft or class at this carrier. In *Frontier Airlines*, 31 NMB 247 (2004), the Board considered a Motion for Reconsideration for the accretion of Appearance Agents and Cleaners. After the initial accretion request was filed by IBT with supporting cards, a group of employees filed a petition signed by more than 50 percent of the Appearance Agents and Cleaners stating that they did not want to be represented by IBT and that they wanted an election instead of an automatic accretion. *Id.* at 255. The Board denied the Motion for Reconsideration stating that they had a policy of not considering such petitions, and Member Van de Water dissented from the decision citing among other issues concerns with the freedom of association rights of the employees.⁶

Moreover, a number of things have changed since then that make it even more necessary to reconsider the accretion policy. As former Member Elizabeth Dougherty noted in three concurrences during her tenure, the 2010 rule change⁷ to allow certification of a representative without an overall majority of the craft or class potentially raises significant issues for accretion. See *NetJets Services*, 39 NMB 33 (2012); *Southwest Airlines*, 39 NMB 246 (2011); *Southwest Airlines*, 38 NMB 87 (2011) (Member Dougherty concurring in each). She specifically warned that applying the 1994 accretion policy can effectively deprive “a group of employees of the opportunity to cast votes for or against

⁵ *Southwest Airlines*, 38 NMB 87, 105 (2011) (Member Dougherty concurring and summarizing prior Board accretion policy).

⁶ Member Van de Water also dissented in *United Parcel Services Co.*, 33 NMB 319 (2006) when the NMB majority determined that accretion without an election was appropriate in part because IBT was “not forcing representation on individuals without their consent.”

⁷ Until 2010, the Board required that 50 percent plus one of the eligible voting members of the craft or class vote in favor of representation in order for an exclusive representative to be certified. 75 Fed. Reg. 26,062.

representation once the Board determines they belong in a larger craft or class that has already voted for representation.” See *Southwest*, 38 NMB at 105.

In addition to the election rule change, statutory amendments to the RLA in 2012 requiring at least a 50 percent showing of interest for holding a representation election also weigh in favor of a reassessment. The Board’s 1994 accretion policy is obviously incongruous with this legislation in that the policy required only an “adequate” showing of interest to accrete without having an election. Indeed, accretion should inherently be required to meet a higher standard for a showing of interest than “adequate” given the underlying constitutional interest of freedom of association. This is not a theoretical concern either since the Board has, in fact, accreted groups with less than a majority showing of interest in the past. The Board has not done that recently, however, as the 50 percent showing of interest requirement has been used for some time for all accretions. In the majority decision, the Board wisely stated publicly that *Ross* has effectively been modified to require at least a 50 percent showing of interest, and I support that public statement and policy as a partial solution to my concerns going forward.⁸

With that said, allowing accretion without an election even with a 50 percent plus showing of interest unfortunately still creates the potential for misuse of the representation process. That is, as currently applied, an organization seeking to represent employees can potentially select its favored electorate from a pool of workers most hospitable to supporting them and then accrete those from opposed subgroups later. The NMB found just such a potential problem for this craft or class in 2001 as discussed more fully below.⁹ Also, the mere collection of cards supporting accretion does not necessarily obviate the importance of the right to a secret ballot vote. While supporting cards are certainly relevant, and the cards in question specifically requested accretion (as required by the NMB policy), the best evidence of the views of any

⁸ The IBT provided cards supporting accretion from more than 50 percent of the 11 potential employees being added so there is no issue in this case with a failure to meet a 50 percent interest criteria.

⁹ There is nothing wrong with an organization requesting an election with the best information it has about the scope of the craft or class and later accreting employees neither it nor the carrier believed shared an appropriate contemporaneous community of interest. Furthermore, both carriers and organizations have an incentive to take strategic positions on the scope of a craft or class in an initial representation election— to increase or reduce the difficulty of a showing of interest and/or to enhance the likelihood of winning the election. I believe the NMB process should limit this kind of “strategic” behavior and focus on securing the association rights of the individual.

group of employees on whether to be represented is in most instances a secret ballot election. As the Seventh Circuit has stated, “Workers sometimes sign union authorization cards not because they intend to vote for the union in the election but to avoid offending the person who asks them to sign, often a fellow worker, or simply to get the person off their back.” *NLRB v. Village IX Inc.*, 723 F.2d 1360, 1371 (7th Cir. 1983). This has been proven out many times, and the NMB has recent experience where cards did not necessarily translate to support in an election. For example, in *Union Pacific R.R.*, 41 NMB 7 (2013), the Board authorized an election with a showing of interest of 50 percent but when the election was held only about a third of the voters supported the union. See *Union Pacific R.R.*, 41 NMB 15 (2013).

Notably also, the NMB policy in this area differs from other agencies with similar responsibilities. Despite equivalent fragmentation concerns, the National Labor Relations Board has generally allowed accretion without an election only in very limited situations, such as where new groups of employees have come into existence after a union’s certification. See, e.g., *United Parcel Service*, 303 NLRB 326 (1991).¹⁰

A reconsideration of the accretion policy also has the potential to improve labor relations and promote majority employee support and participation in collective bargaining, which are separate and important policy interests of the NMB. For example, labor unions and their representatives who have demonstrated majority support among all employees through an election, including those newly added to a unit, in turn are likely to be more successful in maintaining stable, long-term, and productive relationships with carriers. Thus, a majority vote of support by the employees being accreted into a craft or class could benefit the overall bargaining relationship.

Specific Concerns for this Craft or Class at this Carrier

In addition to the above general concerns, the circumstances in this case show some of the potential unintended consequences of the NMB’s current accretion policy. This is, in fact, the fourth time over 13 years where

¹⁰ The NLRB has also considered craft or class fragmentation in other contexts. See, e.g., *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011) (allowing what some characterize as micro-units in a health care setting); but see *The Neiman Marcus Group, Inc., d/b/a Bergdorf Goodman*, 361 NLRB No. 11 (2014) (reversing initial finding that full-time and regular part-time women’s shoes associates in the 2nd Floor Designer Shoes Department and in the 5th Floor Contemporary Shoes Department were an appropriate unit). Such non-system wide units are not contemplated under the RLA though. See, e.g., *Delta Air Lines Global Servs.*, 28 NMB 456, 460 (2001); *American Eagle Airlines*, 28 NMB 383 (2001).

employees have been accreted into this same craft or class at this carrier. See *Frontier Airlines*, 31 NMB 11 (2003), *reconsideration denied*, 31 NMB 247 (2004); 29 NMB 386 (2002); 29 NMB 28 (2001). Excluding the 11 positions at issue in this case, the three prior accretion decisions added over 100 total positions to this craft or class.

The IBT, in fact, won the 2001 election for this craft or class with 134 out of 233 eligible employees (or 57 percent) under the prior election rules which required at least 50 percent plus one of the overall craft or class. See *Frontier Airlines, Inc.*, 28 NMB 527 (2001). In the context of a relatively close election it is worth noting that the NMB remonstrated the IBT for collecting cards from a group of employees -- seven Tool Room Attendants -- for the original election in 2001, not bringing to the attention of the NMB that they had been omitted from the electorate, but then seeking to accrete them a mere 48 hours after winning the election. See *Frontier Airlines*, 29 NMB 28 (2001) (accreting Tool Room Attendants into the Mechanics and Related Employees craft or class but reducing the representation bar to 18 months for the IBT's potential "abuse of Board processes").

The three accretions since 2001 certainly added a large enough number to have potentially affected the 2001 election assuming the craft or class otherwise stayed the same in size. Frontier previously argued this point when in 2004, as part of a Motion for Reconsideration, it stated that the majority of its employees within the Mechanics and Related Employees craft or class "never chose the IBT as their representative." *Frontier Airlines*, 31 NMB 247, 254 (Member Van de Water dissenting). The craft or class of course has not been static since 2001 and so it is not fair to state that the accreted craft or class members would have affected the election only that they could have if the same number of voting craft or class members had existed in 2001.¹¹

Regardless of whether the result would have changed, the right to a secret ballot is important in and of itself. Thus, the working men and women in MCS and MOD positions currently -- along with the Tool Room Attendants,

¹¹ In fact, the craft has actually apparently shrunk since 2001 as the IBT application to accrete the Maintenance Controllers (dated August 12, 2013) showed 135 Mechanics and Related Employees, including the Maintenance Controllers. There is, however, no evidence that the IBT engaged in any "abuse of Board processes" in the instant accretion case (nor any other case besides the Tool Room Attendants in 2001). It is even understandable that the IBT would not have known of the appropriate communities of interest or been able to pass cards for some of the subsequently accreted employees until well after the first election, including by possibly first identifying the positions as sharing a community of interest through a decade of collective bargaining.

GSE Mechanics, Appearance Agents and Cleaners that have been previously accreted into this specific craft or class -- may never have an opportunity to vote on who represents them because of the NMB's current accretion policy.

The primary argument against having an election for accretion is that fragmentation may occur in some instances if the employees vote against accretion. Fragmentation concerns, however, are not persuasive to me since the showing of interest requirement also allows for fragmentation. Moreover, in this case, these positions may have been fragmented from the craft or class for at least 10 and possibly 13 years since they existed to some degree in 2004 according to the September 13, 2013 declaration of Scott Chadwick at paragraph 1 (noting that he had held the position of an MCS from 2004 to 2010 but that the title had changed in 2007 from Maintenance Controller).

Holding an election also should not be a major issue since most accretions are a small number of individuals – in this case 11 — such that the NMB can relatively quickly and painlessly do so. Also, while I believe the best solution might be an election, if we reconsider our general accretion policy there may be other alternatives to an election, including perhaps increasing the showing of interest required, that all three Members and stakeholders could agree to.

With that said, the decision above relies on a policy that has been in effect for 20 years over the course of three presidential administrations and thus certainly is reasonable for the NMB to continue to apply, and the parties to assume remains applicable. In addition, I believe the general goal of avoiding craft or class fragmentation where possible -- and not in conflict with our other statutory responsibilities -- is appropriate. I also concur in this case because the propriety of the accretion process was not specifically raised by the Carrier and the record shows the IBT acted in good faith in seeking an accretion after they learned of the community of interest and obtained supporting cards for a showing of interest. I, however, respectfully suggest to my colleagues and the regulated community it may be time to revise the 1994 accretion policy generally for the reasons announced above.